84-395

NO. _____

Office-Supreme Court, U.S.
FILED
AUG 8 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JEROME H. FIELD

PETITIONER

V.

COMMISSIONER IMMIGRATION &

NATURALIZATION SERVICE

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

JEROME H. FIELD

Petitioner Pro Se
1968 Flatbush Ave.
Brooklyn, N. Y. 11234

Tel. 212 434-0781

3 folders

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States District Court, has jurisdiction of the first instance in a case involving a sham marriage, to avoid the Immigration Laws of the United States, or whether as the court suggests, it is premature and must await the dissolution of the marriage from the state courts?

2. Whether a citizen spouse, who has been deceived into a sham marriage, now upon discovery, entitled to rescission of his sponsorship and more particularly the adhesion agreement, known as form I 134, Affidavit of Support, currently used throughout the United States? The force and effect of such agreement?

3. Whether only the alien in jeopordy is entitled to a "fair hearing" before a Immigration judge, or whether a citizen spouse so situated is entitled to equal protection?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. _____

JEROME H. FIELD

Petitioner

V.

COMMISSIONER IMMIGRATION

& NATURALIZATION SERVICE

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

THE Petitioner Jerome H. Field, respectfully prays that a writ of certiorari issue forth to review the decision and

judgment of the United States Court of Appeals for the Second Circuit, entered May 15, 1984.

OPINION BELOW

The Court of Appeals entered its Memorandum decision dismissing the appeal taken from the Eastern District of New York. Said decision was entered on January 10, 1984 in the Eastern District (APP. A 1)

JURISDICTION

On May 15, 1984, the Court of Appeals entered judgment dismissing petitioners appeal. The jurisdiction of this court is now invoked under Title 28 U. S. C. Section 1254 (1)

CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION, Ammendment V:

Nor shall any person ... be deprived

of life, liberty or property, without due process of law...

OTHER LAW

1. Section 1361 of Title 28 of the U. S. C. provides for mandamus jurisdiction where a clear right to the relief sought exists and there exists a clearly defined and premptory duty on the part of the defendant to provide such relief and there are no other adequate remedies available.

2. The Administrative Procedure Act codified in 5 U. S. C. 701 - 706 authorizes the court to compel administrative action which is unlawfully witheld or unreasonably delayed.

STATEMENT OF THE CASE

In October, 1982, petitioner a widower was deceived by a then illegal alien, subject to immediate deportation, one Leovigilda F. Diaz, Alien Reg. No.

A 26 156 014, now known as Leovigilda F. Field, into a sham or gigolo marriage for the sole purpose of her applying for and receiving a change of status to a preference alien, to avoid the Immigration Laws of the United States.

Unknown at the time, the history of this alien had been that of filing a false financial affidavit in her native Lima, Peru, which secured for her a 4 week visa to visit the United States. This was not her intent and she immediately without permission sought and secured employment. She was employed by at least three different employers, overstayed her visa and was subject to deportation. It was then seeking status in marriage with a American citizen that she

feared she had created problems in one of the households, searching for status, where she had secured employment as a domestic without permission. Now in fear of being reported and facing deportation, she sought out the petitioner, a widower, without family and some twenty years her senior. Not advising of her true status, promising love and devotion, she entered into what was to be a short (11 month) sham marriage, for the sole purpose of securing a change of status to that of a permanent resident, the coveted "green card". It should be noted that this marriage has been dissolved by the state courts, well within the two year limit Congress and the respondents have set forth to judge the validity of a marriage for status purposes.

This lends prima facie support it was sham

and entered into only to secure status and avoid the Immigration Laws of the United States. However, despite the numerous requests, the respondents will not move against this particular alien, despite the fact that the record is replete wherein they have moved against other aliens under similar circumstances. There is no question were this case to be brought before a Immigration Judge, deportation would be ordered.

What of course is of concern to the petitioner is his liability under the Affidavit of Support, form I 134, which is a adhesion agreement forced upon sponsors, currently in effect. The respondents refuse to return or vacate same, the District Director whose inactivity brought forth court action, now [redacted] blames the courts ruling,

which of course is not on the merits, for the courts simply refused to assume jurisdiction, as the reason not to proceed against this alien. The activity of the respondents in moving against other aliens similarly situated and their success rate, can only lead one to believe that this fortunate alien has connections within the New York office. The respondents who have investigated this case for months, with even the Assistant Commissioner of Investigations commenting on the matter have never once saw fit to deny the underlying fraud.

The cases cited and submitted with appellants brief to the Court of Appeals and ordered sent to this tribunal clearly indicate the rules of the respondents and congress. The petitioner who has been defrauded, would wish to be returned to square one, so to speak.

As a part of this effort, he has furnished the respondents and such exist in their files, affidavits from reputable mutual acquaintances attesting to the words of the alien, how she was fearful of deportation and was compelled to marry a American citizen. In addition, now that the appellant had lodged a complaint against her upon discovering the fraud, she filed a false affidavit in a attempt to obstruct justice and prohibit the petitioner herein from testifying against her. Such also exist in the files of the respondents and of course raise the issue of the moral turpitude of the alien and its effect upon her residence status and naturalization status.

It should be made clear to this court, that the petitioner has never actually sought the deportation of this alien. Rather, on November 4, 1983, he wrote the

respondents requesting the withdrawal of his sponsorship. No reply was forthcoming, so the petitioner sought relief in the District court. This court refused jurisdiction, but advised petitioner he was premature and should first dissolve his marriage. (effected June 1, 1984). This is clear error, in total disregard of Clause 2 of the Immigration and Nationalization Act of 1952, which clearly provides jurisdiction despite the status of a marriage within the State courts. This in effect now permits dilatory tactics by a alien in the State courts to prohibit action by the Federal authorities and courts. The case was dismissed for lack of jurisdiction. A United States Assistant Attorney having the file in the case and being experienced with Immigration trials and procedure,

noticed that this case called for a rescission hearing and forwarded the matter to the trial counsel of the Immigration Service, the respondents herein. They advised the petitioner to hold himself and his witnesses in readiness, until about February 29, 1984, when for reasons yet unknown to this petitioner, they decided not to proceed against this particular alien. If then the respondents wish to make a gift of permanent status to this alien, the petitioner should not be asked to have his name affixed to a affidavit of support and thus underwrite their folly.

Not being able to secure relief either from the respondents or the courts,

the petitioner brought suit directly against the alien, then his wife. The respondents were not named and not a party to this action, but did assume the results therein, see (App. 5 a). Judge Connor of the S. D. N. Y. did accept jurisdiction in this sham marriage cause and relieved the petitioner of financial obligations therein and also ordered the return of the property taken illegally from the petitioner's home by the alien in her hasty departure. (see App. 4 a). This decision fully reported and accepted by the Asst. Commissioner has not been accepted by the Director for he refuses to return the papers. The appellant herein seeks clarification from this court.
The property referred to despite numerous requests, has still not been returned.

The purported marriage in itself lasted approximately 11 months, went unconsummated due to the various alleged ailments of the alien, which included amongst other illnesses,nervousness, mental depression, vaginitus, gastric problems, breast cancer, anemia, low blood pressure, arthritis and their related effects. For all of the above the alien sought out continuous treatment while in the home of the appellant.

It should be noted that since the alien left, she has been suprisingly free of the illnesses listed.

On October 1, 1983, without cause the alien left the marital home, advising she had only married to avoid deportation. The marriage was dissolved through divorce on June 1, 1984, less than two years after the marriage.

Exhibit (App. 1) is the order of the Court of Appeals for the Second Circuit.

Appendix (2 a) is the order of the District Court, advising the petitioner to seek the aid of the State court in deciding the dissolution of the marriage before the Federal court can assume jurisdiction.

This as mentioned violates Clause 2 of the 1952 Act as ammended, and throws the burden of Immigration cases of this nature upon the State divorce courts.

App. 3 a, clearly shows the terms of the adhesion agreement Affidavit of Support, which the respondents would lead us to believe has no actual merit or value, but which they still insist upon for every alien processed for permanent residence.

Exh. App. 6 a, is a notarized statement from a social worker in one of the New York City hospitals, which speaks

for itself. The Act of Congress controlling this situation, is the Act of 1952, 8 U. S. C. 1154, as ammended by Section 10 of the Act of 1961, P. L. 87-301.75

Upon a fair hearing by a Immigration Judge, which must be granted and a finding of such deceit and fraud and the entry of a sham marriage, to avoid the Immigration Laws, deportation must be ordered pursuant to Section 8 U. S. C. 1256.

REASONS FOR GRANTING OF THE WRIT

Congress mandates that sham marriages be considered null and void for a alien seeking change of status.

The entire purpose of preferences as granted by Congress under the law is to encourage marital union, family and harmony, not as in this instance a

conduit for sharp practioners in the art of fraud and deceit to achieve preferænce and citizenship.

Such success stories only encourage their bretheran in foreign lands to achieve similar results. The policy of the New York City Welfare agencies as well as those of most cities is first to seek out a viable and financially stable sponser, before the communities tax funds are expended. Such abilities to proceed and enforce against the sponsor is well defined (County of San Diego v. Aranda, unreported No. 290, 744 Superior Court, Calif. 1966. Gordon - Aliens on Public Assitance, 6 I N Monthly Review, 115, 1949. Corcoran - The Executor and the Affidavit of Support

54 ILL. B.J. 1066, 1966).

Thus the courts and agencies of the Federal system will not grant mandamus or in any other manner relieve the citizen spouse who has unknowingly entered into and sponsored a illegal alien.

The alien on the other hand has complete rights to a hearing before a Immigration Judge and then review in the courts.

CONCLUSION

For the foregoing reasons, petitioner Jerome H. Field, respectfully prays of this court that a writ of certiorari issue forth to review the judgment of the United States Court of Appeals for the Second Circuit.

Dated: Brooklyn, N. Y.
July 26, 1984

Respectfully submitted
Jerome H. Field
Jerome H. Field

Petitioner Pro Se

1968 Flatbush Ave.

Brooklyn, N. Y. 11234

Tel. 212 434-0781

WF/lkl UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 15th day of May, one thousand nine hundred and eighty-four.

Present:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE RALPH K. WINTER

Circuit Judge

HONORABLE MORRIS E. LASKER, */
District Judge.

----------X

JEROME H. FIELD,

Plaintiff-Appellant, 84-6032

v.

COMMISSIONER IMMIGRATION and NATURALIZATION SERVICE,

Defendant-Appellee.

----------X

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by appellant pro se and by counsel for appellee.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. Appellant seeks to revoke his financial sponsorship of his wife, made in connection with her application for permanent resident status in the United States. The district court did not have subject matter jurisdiction to rule on appellant's request, and properly dismissed the complaint for lack of jurisdiction.

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* /

Honorable Morris E. Lasker, Senior United States District Judge for the Southern District of New York, sitting by designation.

2. Appellant apparently also seeks the revocation of his wife's permanent resident status. We find that he has no standing to seek such relief.

3. We have considered all of the appellant's arguments and find them without merit.

4. The district court's dismissal of appellant's complaint is affirmed.

WILFRED FEINBERG, Chief Judge

RALPH K. WINTER, Circuit Judge

MORRIS E. LASKER, District Judge

N. B.

Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

FIELD,

Plaintiff

-against-

COMMISSIONER OF IMMIGRATION, 83 CV 5278

Defendant

----------X

United States Courthouse
Brooklyn, N. Y.

January 10, 1984

BEFORE:

HONORABLE MARK A. CONSTANTINO

U. S. D. J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

EASTERN DISTRICT COURT REPORTERS
United States District Court
225 Cadman Plaza East
Brooklyn, N. Y. 11201
852-7105

APPEARANCES:

Robert Giusti, Esq.

Attorney for Plaintiff

Raymond J. Dearie, Esq.
United States Attorney
for the Eastern District
of New York

By: Ruth Simon, Esq.
Assistant U. S. Attorney

MR. GIUSTI: Robert Giusti, G-i-u-s-t-i, 401 Broadway, New York.

MS. SIMON: Ruth Simon for the Defendant.

THE COURT: I know what this is about. I want to know what you intend for the Court to do to help you.

MS. SIMON: I represent the defendant in this case.

THE COURT: You represent the defendant?

MS. SIMON: Before we get to that, the United States has not been served with a copy of this complaint.

THE COURT: Has not been served?

MS. SIMON: No.

THE COURT: It wouldn't make any difference. I want to know what you expect this court to do with reference to your matrimonial problem? Whether there is fraud or whatever, that is a matter for a State Supreme Court. I moved out of that court 14 years ago; I suggest you go back there.

MR. GIUSTI: What Mr. Field desires is to be taken out of the Immigration contract which obligates him to pay for the room and board of his estranged spouse.

THE COURT: Go back and get your annulment. This court can't do anything. You're premature. I have no jurisdiction. I tell you that immediately. I refuse to accept this action and I am going to dismiss it.

MS. SIMON: I want a copy of the minutes.

MR. GIUSTI: Can we take exception to that ruling?

THE COURT: Yes

I won't let you do anything else but take exception. You're in the wrong court. Dismissed.

* * * * *

AFFIDAVIT OF SUPPORT

(ANSWER ALL ITEMS; FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)

I, _____ (Name), residing at _____ (Street and Number)

_____ (City) (State) (ZIP Code if in U.S.) (Country)

BEING DULY SWORN DEPOSE AND SAY:

1. I was born on _____ (Date) at _____ (City) _____ (Country)

   If you are not a native born United States citizen, answer the following as appropriate:

   a. If a United States citizen through naturalization, give certificate of naturalization number _____

   b. If a United States citizen through parent(s) or marriage, give citizenship certificate number _____

   c. If United States citizenship was derived by some other method, attach a statement of explanation.

   d. If a lawfully admitted permanent resident of the United States, give 'A' number _____

2. That I am _____ years of age and have resided in the United States since (date) _____

3. That this affidavit is executed in behalf of the following person:

   _____ (Name) (Sex) (Age)

   _____ (Citizen of — Country) (Marital Status) (Relationship to Deponent)

   _____ (Presently resides at — Street and Number) (City) (State) (Country)

4. That this affidavit is made by me for the purpose of assuring the United States Government that the person named in item 3 will not become a public charge in the United States.

5. That I am willing and able to receive, maintain and support the person named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person will not become a public charge during his or her stay in the United States, or to guarantee that the above named will maintain his or her nonimmigrant status if admitted temporarily and will depart prior to the expiration of his or her authorized stay in the United States.

6. That I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person named in item 3 and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services, who may make it available to a public assistance agency.

7. That I am employed as, or engaged in the business of _____ (Type of business) with _____ (Name of concern)

   at _____ (Street and Number) (City) (State) (ZIP Code)

   I derive an annual income of (if self-employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instruction for nature of evidence of net worth to be submitted.) $_____

   I have on deposit in savings banks in the United States $_____

   I have other personal property, the reasonable value of which is $_____

   I have stocks and bonds with the following market value, as indicated on the attached list which I certify to be true and correct to the best of my knowledge and belief. $_____

   I have life insurance in the sum of $_____

   With a cash surrender value of $_____

   I own real estate valued at $_____

   With mortgages or other encumbrances thereon amounting to $_____

   Which is located at _____ (Street and number) (City) (State) (ZIP Code)

Form I-134
(Rev. 2-27-82) Y

APP. 3A

BEST AVAILABLE COPY

BEST AVAILABLE COPY

NAME OF PERSON	WHOLLY DEPENDENT	PARTIALLY DEPENDENT	AGE	RELATIONSHIP TO ME

9. That I have previously submitted affidavit(s) of support for the following person(s). If none, state none.

Name	*Date submitted*

10. That I have submitted visa petition(s) to the Immigration and Naturalization Service on behalf of the following person(s). If none, state none.

Name	*Relationship*	*Date submitted*

11. (Complete this block only if the person named in item 3 will be in the United States temporarily.)
That I ☐ do intend ☐ do not intend, to make specific contributions to the support of the person named in item 3. (If you check "do intend", indicate the exact nature and duration of the contributions. For example, if you intend to furnish room and board, state for how long and, if money, state the amount in United States dollars and state whether it is to be given in a lump sum, weekly, or monthly, and for how long.)

OATH OR AFFIRMATION OF DEPONENT

I swear (affirm) that I know the contents of this affidavit signed by me and the statements are true and correct.

Signature of deponent _____

Subscribed and sworn to (affirmed) before me this _____ *day of* _____, *19* _____

at _____. *My commission expires on* _____.

Signature of Officer Administering Oath _____ *Title* _____

If affidavit prepared by other than deponent, please complete the following:
I declare that this document was prepared by me at the request of the deponent and is based on all information of which I have any knowledge.

_____
(Signature) *(Address)* *(Date)*

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U.S. GOVERNMENT PRINTING OFFICE : 1982 0 - 372-234

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

JEROME H. FIELD

Plaintiff

-against-

LEOVIGILDA F. FIELD

Defendant

84 Civ. 475 (WCC)

ORDER

----------X

CONNOR, D. J.

Upon the application of plaintiff, Jerome H. Field, and with the consent of the defendant, Leovigilda F. Field, it is hereby

ORDERED, that plaintiff is relieved of financial responsibility for any obligations which defendant has heretofore incurred or shall hereafter incur, and it is

FURTHER ORDERED, that defendant return immediately to plaintiff all of plaintiff's personal records, memorabilia, or other property of plaintiff in her

possession or control, and it is

FURTHER ORDERED, that this action be discontinued without costs to either party.

WILLIAM C. CONNOR

United States District Judge

Dated: New York, N. Y.
June 25, 1984

U. S. Department of Justice

Immigration & Naturalization

Service

425 Eye Str, N. W.

Washington, D. C.
20536

CO 893. 1 - C

Jerome H. Field
Box 292, Midwood Station
Brooklyn, N. Y. 11230

Dear Mr. Field:

The Investigations Division has received and reviewed the correspondence from you dated May 12, June 12, 15, and 26, 1984. I would like to take this opportunity to assure you that the Immigration and Naturalization Service will comply with the Federal Court order from the Southern District of New York, relieving you of financial responsibility of any obligations incurred by your former spouse, Leovigilda

F. Field.

If this Service can be of assistance in the future, please contact us.

Sincerely,

John P. Shaw
Assistant Commissioner
Investigations

UNITED STATES DISTRICT COURT

WASHINGTON, D. C.

----------X

JEROME H. FIELD

Petitioner

-against-

Index No.

IMMIGRATION AND
NATURALIZATION SERVICE

Affidavit

Respondents

----------X

STATE OF NEW YORK)

COUNTY OF KINGS ss:

Esphera Schachtman, being duly sworn and being familiar with this action does make this affirmation.

1. I am employed as an Accounts Supervisor with the Jacobi Division of the Bronx Municipal Hospital Center, Pelham Pkway. So. & Eastchester Rd., Bronx, N. Y.

I review applications and supervise

investigators who collect money from individuals who can pay for hospital treatments. The current rate of 1 day's stay at the hospital where I am employed is $539.00, all inclusive.

If someone who has a sponsor who has signed an I 134 Affidavit of Support form, with the Immigration Service and that sponsor is financially responsible, we will make every effort to collect from such sponsor, before permitting application for Medicaid, Welfare, or any other form of payments. I examine applications of this nature almost daily and have been thus employed for the past 13 years, actually since March of 1971. I now supervise 5 people who do this type of investigation.

We do treat the I 134 form seriously and in my opinion if there is a financially responsible sponsor, before

Medicaid will accept the burden of payment, the sponsor will be called upon. It is the overall policy to avoid payments by the taxpayers, where there exists a viable sponsor who has signed a agreement. It is my considered opinion after examining the I 134 form of the Immigration and Naturalization Service, that this form and agreement therein would make the signator liable.

Dated: July 14, 1984

Esphera Schachtman

1005 Esplanade

Bronx, N. Y. 10461

Sworn before me on this the 14th day of July, 1984.

Notary Public